

**LAKE COUNTY BOARD of ADJUSTMENT**  
**May 13, 2015**  
**Lake County Courthouse Commissioners Office (Rm 211)**  
**Meeting Minutes**

**MEMBERS PRESENT:** Sue Laverty, Paul Grinde, Steve Rosso, Don Patterson

**STAFF PRESENT:** LaDana Hintz, Jacob Feistner, Lita Fonda

Sue Laverty called the meeting to order at 4:02 pm.

For the April minutes, Steve pointed out two corrections on pg. 6. In the second line of the second paragraph ‘again the bench’ was changed to ‘against the bench’. In the third paragraph, the last sentence read, ‘It was the regulation.’ Sue suggested removing that.

**Motion made by Paul Grinde, and seconded by Don Patterson, to approve the April 8, 2015 meeting minutes as amended. Motion carried, all in favor.**

**OLSON CONDITIONAL USE—LAKE MARY RONAN (4:04 pm)**

Jacob Feistner introduced Randy David, the agent for the Olsons, and presented the staff report. (See attachments to minutes in the May 2015 meeting file for staff report.)

Sue asked if this was a single story. Jacob said the living quarters were located in the front corner of the lower level of the barn. Randy Davis described the upper portion as an open space, a hay loft. Steve checked that there was no limit on the size of a guest house but it had to be dependent. He couldn’t find the removal of the kitchen and laundry facilities in the conditions. This could be added to condition #2. Jacob pointed to discussion item #5. In conditions, it said they’d have to meet the requirements of Environmental Health.

Randy Davis spoke on behalf of the Olsons. They were trying to build a cabin on the lake. They wanted to stay in the barn part time while the house was being built. Their full-time residence was in Missoula. They didn’t have a problem with removing the kitchen and laundry facilities from the barn.

*Public comment opened:* None offered. *Public comment closed.*

Steve suggested appending, “as a dependent structure, requiring removal of laundry and kitchen facilities” to condition #2 unless that would be redundant. LaDana said the applicants had to comply with Environmental Health’s approval, which came from their requirements rather than Planning requirements. If the applicants went through sanitation approval and got permission for a kitchen and laundry, they could potentially have those. It was a sanitation thing rather than zoning. Sue suggested leaving out the amendment in case Environmental Health changed its mind.

**Motion made by Sue Laverty, and seconded by Paul Grinde, to approve the conditional use with findings of fact and conditions. Motion carried, all in favor.**

**ROE VARIANCE—FINLEY POINT (4:12 pm)**

LaDana Hintz checked that the Board received the comment letter handout. She noted the Roes were here, along with Matt Nerdig on behalf of A2Z Engineering. She presented the staff report. (See attachments to minutes in the May 2015 meeting file for staff report and handout.)

LaDana clarified for Sue that there were 2 cabins on this particular lot and another structure, and this was what they split in 2003. A boundary line adjustment occurred in 2004, which changed the lot sizes again. Once that happened, they had the 1.9-acre parcel that was being dealt with tonight. Steve checked if these were all independent. LaDana didn't think this was totally clear from the old approvals. The thing to remember was when the Commissioners approved the subdivision in 2003, there were two residential structures so that was what the County would recognize on there. Then the DEQ (Department of Environmental Quality) rewrite came in and had three. The Commissioners should have updated the approval at that time to allow for three. That didn't happen. Sue asked if under the subdivision approval, they were supposed to remove one of the houses. LaDana explained that was under the 2002 zoning approval. That didn't happen. LaDana continued with the history outlined in the staff report.

Steve asked questions about the deck. LaDana explained it was decreased by five feet, as required. The deck was added after the 2002/2004 approvals. It wasn't something the BOA could approve. The initial 2002 site plan didn't address how far they really were from the lake. In 2010, they appeared to be closer to the lake than what it said. Steve checked that a 5-foot deck was approved and then a wider deck was built. LaDana agreed. The BOA couldn't have done an approval for that deck because it was in the lakeshore protection zone; the Commissioners would have had to approve it. The BOA approved something for which they didn't have the legal authority. It then went to the Commissioners, who ultimately granted a variance based on what the BOA had approved, which was a 5-foot deck. [The owners] removed the parts that didn't comply with that and revegetated to stabilize the bank like they were required to do. The only item that remained was to address the stormwater management. They had to get to the DEQ approval point in order to address that.

LaDana pointed out the guesthouses for Sue. She mentioned the zoning regulations changed in the middle of this. Steve asked about enclosing of the porch. It was approved as the last enlargement? LaDana said in 2010, they couldn't enlarge anymore because they'd be over 1000 square feet for a guest house. That was why the condition was included. If there were no longer guest houses on the property, they would need to take that [condition] away to be able to add to cabin #1 to connect it to the garage that they proposed building.

Steve asked LaDana if this was a single-family residential zone. LaDana said it was residential. You had to remember that this property had historically been part of a resort.

There were a lot of East Shore and Finley Point properties that had multiple residential structures that existed since before the zoning. Technically they didn't have guest houses; they didn't have that term back then. These had been used as two residential dwellings. Steve asked about the 19-foot wide addition that turned out to be 24 feet wide. LaDana said the Board approved of the addition in 2010 with an amendment but they needed to deal with the stormwater and to address the vegetated buffer, which had been addressed. She suggested they keep in mind that a lot of what was being done was to amend to accurately reflect what existed on the ground in 2010 and also what had historically been there with the subdivision approval. Steve checked that the permit which allowed for the 24-foot width required a variance because the width pushed it into the 50-foot buffer zone and so as part of the variance approval, they required the gutter and stormwater thing. LaDana replied the gutter and stormwater thing had been required from the 2002 approval. That condition had been hanging out there and hadn't been addressed. They were trying to address that now.

LaDana gave clarifications as requested by Board members as she continued with the staff report. The house that burned had been built prior to 2010. It had been the third structure on the DEQ approval so they were essentially back to the subdivision approval. Now the DEQ approval didn't match. A zoning conformance would be needed to build a garage on the existing foundation, and that application had been made. The middle cabin (mentioned in #10, pg. 16) was expanded beyond its approval. The 2010 approval amended the 2004 approval to clean that up. In #13 (on pg. 17), the garage was ordered removed by the BOA in 2010. She didn't know if the order was for the second story only or for the entire structure. The additional story wasn't built and the applicants got a permit to tear down what was torn down. [The garage] was built without a permit, which was what brought staff to the property in 2010. The third residence burned down in 2010 after the garage without a permit was built.

Steve asked if it was okay to have the garage now because the third residence was gone. LaDana said no, at that point they would still be over the Commissioners' approval, which said two residential structures. They would have needed to clean that up. Steve confirmed with LaDana this was because the garage wasn't attached to the house. It was a third structure. This was an addition to the house rather than a separate structure. Sue thought at the time, they could have the garage but with no living area. LaDana said Planning couldn't issue permits because they couldn't get Sanitation signed off because they didn't comply with the COSA. Everything sat while the issues there were addressed. The COSA rewrite still needed to be addressed. This approval [proposed tonight] needed to be locked in so they could move that forward and they could finish cleaning up the rest of it.

LaDana finished the staff report presentation. She noted in condition #8 on pg. 26 of the staff report that the permit numbers at the end of the condition should read FP 04-11 (2) and FP 10-12.

Steve referred to the point that even though this would be one structure, it would look like two structures. To a neighbor or someone passing on the lake, it wouldn't look like a

40-foot high structure. It would look like two structures, both of which were under 30 feet. LaDana affirmed. The reason it was connected was that when they went to stabilize the bank, part of that became the floor of the garage and connected things together. The slope and the definition of building height caused issues.

Paul asked about attachment 6b. LaDana explained that was what they had to take down in 2010. That was where the new garage would be and essentially what they proposed. A lot more vegetation had filled in along the front. She compared the vegetation in a picture from 2005 and from 2010. She referred to attachment 6c and compared the difference in the visibility of the cabin in the two. She didn't think you'd see much of the garage. Steve observed another difference in that the bottom picture, from 2010, had the deck that wasn't approved and was decreased in the 2015 picture. LaDana noted that they also had to vegetate and a lot more vegetation was added to that slope.

Matt Nerdig of A2Z commented as the agent for the Roes. Once the planning issues were resolved, the next step was to resolve the COSA. To add another piece, part of the reason the COSA wasn't rewritten originally was DEQ just revised rules in the last year that would allow for the rewrite of the COSA. Previously a variance wasn't allowed to the way that lot sizes were defined along with an onsite septic system and an onsite water system in combination with the two houses. Now a variance was allowed and the COSA could be fixed to match what's onsite. Steve asked if they restricted the number of residential dwellings that could use onsite water and sewer. Matt described the involved ARM notations and the revision. A stormwater management plan would be approved by DEQ and Lake County Environmental Health and would resolve that issue. LaDana said that came up because the original DEQ showed a swale at the bottom of the hill in the lake. The stormwater couldn't be put there. Matt said the design wasn't workable at all. Sue asked how that got approved. Matt replied DEQ approvals changed a lot since 2002. There were 2002 approvals with hand sketches instead of drafted plans and with a lot less in terms of supporting materials. The process was a lot different, even though it didn't seem like that long ago.

Adina Roe described that she bought the property with her brothers, with two cabins from the 1940's. The third structure was approved and built. It was gone now. There hadn't been a garage on the property. When this was approved in 2003, they started to build the garage but didn't finish it. They tried to finish it later and things got crazy. Brad said it was an eyesore right now. It had been a construction site since 2004. Adina summarized there was a burnt structure and an incomplete garage.

Sue asked what they planned to do with the upper garage that would go on the foundation where the house had been. Brad said the upper one was just a garage. They had an orchard there. The lower one would have parking for the lower cabin and for equipment. Sue mentioned somewhere in the report it appeared drawn as two-stories but undefined as far as what would be put in there. Matt thought there might be confusion between the upper garage and the lower garage. They didn't submit plans for the upper garage because the foundation was there. Their view was to simply complete a garage. LaDana said the plans said 'new garage'. Adina said previously it was a full-blown house. Brad

said one issue would be getting whatever they needed in order to get into the garage. It was set up as a full rectangle. He asked for guidance on that. LaDana suggested that Matt could help. Matt explained they didn't address that because the variance concerned the lower structure and the height issues down below, and [the upper structure] had no water or sewer since it was just for storage. It wasn't on their radar. Sue appreciated that. It was brought up as an unknown and historically this piece of property hadn't really complied. Her concern was that this stopped now. Matt understood—fix everything and make sure it matched. He said they could submit full plans showing exactly what they wanted to do and how they would use that existing foundation with the zoning conformance permit. Sue thought it was covered here. She just wanted to verbalize that. The Roes mentioned it had been a challenge and a nightmare.

Steve brought up the first of two issues, which echoed Sue's concern about one noncompliance after another. He asked the Roes to tell him why the Board could expect something to change and that the rules, regulations and permits would be followed. He referred to an earlier comment that the Roes thought they had a permit for the garage but they didn't. LaDana didn't think they should dwell on that. Part of the issue was the Planning staff from then was gone. She'd seen lots of stuff where there wasn't a track record of what happened. She thought the focus should be on the plan that they have now and agreeing to move forward. Brad said that he had approval although he didn't have something in writing. Adina thought part of the problem was that they had approvals but they didn't finish the garage. There was no record of it and there had been lots of changes in the Planning Dept. since then. Everything got kind of blown up. She reiterated that it had been a challenging process and a shared dysfunctional process. They wanted to move on.

LaDana mentioned the way the permits were written up had changed significantly. [Staff] tried to make it clear what [permittees] were allowed to do but with the permits [the Roes] were issued, she had trouble figuring out what they were allowed to do. She could understand if they didn't know for what they had approvals. She thought the Roes were showing they were willing to come in and try to finish cleaning this up. They'd been working on cleaning this up for 5 years. There were a lot of hurdles to overcome to get to this point. Adina commented they'd had financial hurdles as well from the process. Brad said they needed to get a permit for the flat work on the foundation.

Matt said from the consulting side, they saw a lot of projects where they'd been working on it for the last couple of years to try to figure out a solution that met the rules. This was one where he and Rob [Smith] came to a couple of points where there was no easy way to meet all the requirements. It took a long time of going back and forth to even get to this point. They worked with LaDana to get to this point for an approval process. They could then fix the COSA afterwards and bring everything into compliance. Part of the reason this stretch was so drawn out was because they were stuck for a while at the impasse on the sanitation side with the COSA. Neither side could move without the other and they couldn't figure out a way through it.

Steve brought up his second issue. As members of the Board of Adjustment, they had to be convinced there wasn't an alternative to the variance. It looked like it was possible to enlarge the footprint of the garage by extending it to the south. That would double the size of it with the parking area in the front and the living quarters in the back. It could be one-story. Brad said the stairs had to be there to connect. That only fit in one spot. Part of the design attempted to use the existing foundation. There was already a finished retaining wall, which was part of the slope stabilization in front of the garage. Steve said there was also a concrete driveway that sloped into there. There would be some demolition of driveway, regrading, repouring of foundation and so forth. He could see that was a problem. Unfortunately they weren't supposed to grant variances just because it would be expensive to not need a variance. LaDana thought economic hardship might be a criteria if something seemed unreasonable.

Steve said he would like [the applicants] to tell him why it's unreasonable so that was in the record. He described an alternative layout using a site plan. Would this regrading make the driveway too steep? Matt said that was one of the concerns. That would then make the angle you'd be coming in at the top of the garage door much more of an issue. If you were parking in front of the garage it would make it much more difficult to actually turn around and leave. Also, if you tore up that area, you could end up redoing the retaining walls above. Steve checked that the concrete drive went from one-car width to two-car width in front of the garage. That might increase the impervious surface, which would increase the demands on the stormwater system. Matt explained the impervious surface would be expanded since they would have to bump it out far enough to allow cars to turn around. He explained further, using the site plan. You'd also be adding steepness. He had another concern that would need to be mitigated. It was a fairly gentle slope and it wasn't too hard to divert water away from the garage. The steeper that became, the harder it would be to divert that water from the garage.

LaDana said the living areas would still need to be connected. Attachment 6b showed where the cabin roof was right now. You could walk up on it. Something still needed to be built to connect the two. Steve clarified he thought it was important for the record that the reasons they couldn't build a single-story garage were defined. That was why he brought this up, so the reasons why they needed for this garage to be two stories were in the record. Sue added this was for future variances, too. LaDana thought it was important to remember that the hardship was being created by this concrete slab that nobody saw. They didn't want to cut the two apart because it held the cabin there.

Paul asked about the signature of the other owner. LaDana said they hadn't signed yet. She did get an email consenting to the submittal of the application. Based on her discussions with Environmental Health, they did need to sign the sanitation applications at some point to get it moving forward. Adina said she had signatures done but needed to get a copy. Paul agreed with Sue and Steve that this had been a can of worms for years. Sue said they better not see this again. Steve checked that appropriate penalties had been applied. LaDana assured that the Roes had done all of that.

**Motion made by Sue Lavery, and seconded by Don Patterson, to approve the variance with staff report, findings of fact and the conditions, including the amendment to condition 8 for permit numbers. Motion carried, all in favor.**

**OTHER BUSINESS (5:15 pm)**

LaDana asked Board members if they would be interested in commenting on the Polson Development Code. The Board occasionally saw things from that zoning area. The Board thought they could look at electronic copy to start, given the document length.

**Sue Lavery, chair, adjourned the meeting at 5:18 pm.**